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HURCO LTD. OF LONDON  
LONDON, ENGLAND

PRIVILEGE FOR WRIT OF HABEAS CORPUS  
IN THE SUPREME COURT OF MINNESOTA AND OTHER  
SUPPORT THEREON

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# INDEX

## SUBJECT INDEX

	Page
Petition for writ of certiorari.....	1
Foreword .....	1
Opinion of the court below .....	2
Summary statement of the matter involved.....	2
Jurisdiction of this Court.....	11
Questions presented .....	12
Reasons relied on for the allowance of the writ ..	15
Prayer for writ .....	19
Brief in support .....	21
Opinion of the court below .....	21
Statement of the case .....	21
Specifications of error to be urged.....	21
Summary of the argument .....	22
Argument .....	26

## CASES CITED

<i>Carpenter v. Strange</i> , 141 U. S. 87.....	24, 30
<i>Chicago, Rock Island &amp; Pac. Ry. v. Schendel</i> , 270 U. S. 611 .....	12, 24, 26, 30, 31, 32
<i>Christmas v. Russell</i> , 5 Wall. 290 .....	23, 28
<i>Clarke v. Clarke</i> , 178 U. S. 186 .....	26, 33
<i>Equitable Life Assur. Soc. of U. S. v. Pool</i> , 145 S. W. (2d) 25 .....	23, 28
<i>Gates v. Mortgage Loan &amp; Inv. Agency</i> , 139 S. W. (2d) 19 .....	24, 30, 31
<i>Hood v. McGhee</i> , 237 U. S. 611.....	26
<i>Huntington v. Atrill</i> , 146 U. S. 661 .....	26, 33
<i>Irvan v. Bounds</i> , 170 S. W. (2d) 674.....	23, 29
<i>Magnolia Petroleum Co. v. Hunt</i> , 320 U. S. 430, 12, 23, 26, 28, 32, 33	
<i>Maltz v. Jackoway-Katz Cap Co.</i> , 82 S. W. (2d) 909 ..	23, 29
<i>Milwaukee County v. White Co.</i> , 296 U. S. 268 .....	26
<i>Olmstead v. Olmstead</i> , 216 U. S. 386.....	26, 33
<i>Riley v. New York Trust Co.</i> , 315 U. S. 343.....	26, 32

	Page
<i>Roche v. McDonald</i> , 275 U. S. 449 .....	23, 28
<i>Rutherford v. Tobin Quarries</i> , 82 S. W. (2d) 918,	
23, 24, 26, 29, 30	
<i>State ex rel. v. Fulbright</i> , 169 S. W. (2d) 59,	
23, 24, 26, 29, 30	
<i>U. S. v. California &amp; Oregon L. Co.</i> , 192 U. S. 355 ....	26, 32
<i>Werlein v. New Orleans</i> , 177 U. S. 390 .....	26, 33
<i>Williams v. State of North Carolina</i> , 317 U. S. 287 ..	12, 26
<i>Wisconsin v. Pellican Ins. Co.</i> , 127 U. S. 265 .....	26, 33

#### CONSTITUTION OF UNITED STATES CITED

Section IV, Article 1, Constitution of the United States .....	11, 15, 16, 17, 19, 21, 22, 23, 24, 25, 26, 27
--	--

#### STATUTE CITED

Laws Arkansas 1939, Act 319, Sec. 25 (a) .....	23, 28
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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**No. 575**

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JACK GORUM AND NATIONAL MUTUAL CASUALTY  
COMPANY,

*vs.*

*Petitioners,*

RUBY O. LOUDENSLAGER AND CHARLOTTE  
LOUDENSLAGER

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**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF MISSOURI**

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*To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the United States:*

Come now Jack Gorum and National Mutual Casualty Company and respectfully petition this Honorable Court to grant a writ of certiorari to review the opinion and judgment of the Supreme Court of Missouri *en banc*, rendered and entered on the 10th day of June, 1946, in the case lately pending in said Supreme Court of Missouri *en banc* styled Ruby O. Loudenslager and Charlotte Loudenslager, respondents, *vs.* Jack Gorum and National Mutual Casualty Company, appellants, being Cause No. 39532 of



the causes on the docket of said Supreme Court of Missouri *en banc*, said judgment and opinion affirming the judgment of the Circuit Court of Cedar County, Missouri, which said Circuit Court judgment affirmed the award of the Missouri Workmen's Compensation Commission, in the sum of \$9,521.00, in favor of respondents and against petitioners (R. 234 C, D, E) which said judgment of the Supreme Court of Missouri *en banc* became final on the 8th day of July, 1946, by the overruling by that Court of petitioners' motion for rehearing (R. 255).

### **Opinion of the Court Below**

The opinion of the Supreme Court of Missouri *en banc* in said cause of Ruby O. Loudenslager and Charlotte Loudenslager, respondents, *vs.* Jack Gorum and National Mutual Casualty Company, appellants, which petitioners here seek to have reviewed, is reported in 195 S. W. (2d) at page 498, and appears on page 246 to page 253 of the transcript of the printed record filed herewith. Said opinion has not yet been published in the official State Reports.

### **Summary Statement of the Matter Involved**

This proceeding was commenced by the filing of a claim for compensation before the Missouri Workmen's Compensation Commission by Ruby O. Loudenslager for herself and on behalf of her minor daughter, Charlotte Loudenslager, on the 17th day of December, 1941, seeking an award of compensation under the Missouri Workmen's Compensation Act on account of the death of R. Guy Loudenslager on the theory that he was an employee of Jack Gorum under a contract of hire entered into in the State of Missouri (R. 2-6). R. Guy Loudenslager was the husband of Ruby O. Loudenslager and the father of Charlotte Loudenslager (R. 4).

Petitioner Jack Gorum was engaged in the trucking business under the name of Arkansas Traveler Truck Lines, at Bentonville, Arkansas (R. 3). Petitioner National Mutual Casualty Company carried workmen's compensation insurance on Jack Gorum's employees in the State of Arkansas. R. Guy Loudenslager owned a refrigerated tractor trailer truck, which he was using to haul freight for Jack Gorum under a contract, whereby he was paid a percentage of the gross freight charges for the freight he hauled (R. 101, 154). Jack Gorum's operations extended into Missouri through Arkansas and into Mississippi and Louisiana (R. 99-100).

On June 18th, 1941, R. Guy Loudenslager was driving his truck north on U. S. Highway 65, just outside of Pine Bluff, in the State of Arkansas, returning from a trip to Mississippi, hauling freight under contract with Jack Gorum (R. 234 D). His truck collided with another truck on the highway and R. Guy Loudenslager sustained injuries from which he died the following day at Pine Bluff, Arkansas (R. 234 D).

On July 23rd, 1941, Ruby O. Loudenslager filed a claim for herself and on behalf of her minor daughter, Charlotte Loudenslager, respondents herein, before the Arkansas Workmen's Compensation Commission, to recover compensation under the Arkansas Workmen's Compensation Act on account of the death of R. Guy Loudenslager, on the ground that he was an employee under a contract of hire with Jack Gorum and died as a result of accidental injuries arising out of and in the course of his employment—Employer's and Insurer's Ex. 1 (R. 22, 297). This claim was heard before the Arkansas Workmen's Compensation Commission on December 15th, 16th, and 17th, 1941, and was at that time continued until January 12th, 1942, for further hearing, at the request of claimants (R. 26). On January

12th, 1942, said proceeding was continued to January 24th, 1942—Claimants' Exhibit C (R. 29, 262). The cause was taken as submitted and an award was entered February 16th, 1942—Employer's and Insurer's Exhibit 1 (R. 22, 290-297).

### **The Arkansas Award**

The award was entered on the merits of said claim by the Arkansas Workmen's Compensation Commission, finding that R. Guy Loudenslager was not an employee of Jack Gorum and that he was an independent contractor, and finding that the contract under which he was working at the time of his injury was entered into in the State of Arkansas—Employer's and Insurer's Exhibit 1 (R. 22, 290, 296). Compensation was denied because claimants (respondents herein) failed to prove that deceased was an employee under a contract of hire. Compensation was not denied on the ground that the Arkansas Compensation Law afforded no remedy.

No appeal was taken from this award of the Arkansas Workmen's Compensation Commission—Employer's and Insurer's Exhibit 1 (R. 22, 306), and the award became final and conclusive between the parties in the State of Arkansas thirty days thereafter—Section 25 (a) of Act No. 319, Acts of the General Assembly for the year 1939, State of Arkansas (R. 14, 19).

Thereupon, on February 5th, 1942, petitioner Jack Gorum in his answer to the claim for compensation filed before the Missouri Workmen's Compensation Commission, pleaded, alleging that all of the issues before the Missouri Workmen's Compensation Commission had been finally adjudicated by the Arkansas Workmen's Compensation Commission (R. 7-9).

On May 17th, 1943, petitioner National Mutual Casualty Company, in an amended answer filed before the Missouri

Workmen's Compensation Commission to the claim for compensation of Ruby O. Loudenslager and Charlotte Loudenslager, pleaded the final adjudication and award by the Arkansas Workmen's Compensation Commission of the issues presented in the claim filed before the Missouri Workmen's Compensation Commission (R. 9, 10-11). The claim before the Missouri Workmen's Compensation Commission was heard on February 22nd, 23rd, and 24th, 1944, at Joplin, Missouri, by a Referee of the Missouri Workmen's Compensation Commission (R. 12). Petitioners, Jack Gorum and the National Mutual Casualty Company, introduced a duly authenticated copy of the record of the Arkansas Workmen's Compensation Commission in evidence, showing the final award of that Commission, Employer's and Insurer's Exhibit 1 (R. 22, 290-307).

The Arkansas Workmen's Compensation Law was introduced in evidence before the Missouri Workmen's Compensation Commission (R. 14, 15-21). That law provides:

"Sec. 2. Definitions. As used in this chapter

(a) 'Employer' means any individual, partnership, association or corporation carrying on any employment  
 • • • (R. 14, 15).

(b) 'Employee' means any person, including a minor, whether lawfully or unlawfully employed, in the service of an employer under any contract of hire or apprenticeship, written or oral, express or implied • • •  
 (R. 14, 15).

(c) 'Employment' means every employment carried on in the state in which five or more employees are regularly employed in the same business or establishment, except (1) domestic service, (2) agricultural farm labor, (3) institutions maintained and operated as public charities, (4) the State of Arkansas and each of the political subdivisions thereof, (5) any person engaged in the vending, selling or offering for sale or

delivering directly to the general public, any newspapers, magazines, or periodicals • • • (R. 14, 15).

(f) 'Injury' and 'Personal Injury' shall mean accidental injury or death arising out of and in the course of employment • • •" (R. 14, 15).

Section 3 provides that every employer and employee, unless specifically exempted, is subject to the provisions of the Act (R. 14, 16).

Section 4 provides that the remedy granted to an employee under the Act is exclusive of all other rights and remedies of such employee (R. 14, 16).

Section 5 provides that every employer subject to the Act shall secure compensation to his employees for disability or death from injury arising out of and in the course of the employment (R. 14, 16).

Section 15 (c) (3) provides for payment of compensation for death to the widow and children (R. 14, 17).

Section 25 "Review of Compensation Order. (a) A compensation order shall become effective when filed in the office of the commission as provided in Section 23, and, unless reversed or modified on appeal as provided in sub-division (b) of this Section, shall become final at the expiration of the 30th day thereafter" (R. 14, 19).

The Missouri Workmen's Compensation Law (Sec. 3689-3766 R. S. Mo. 1939) provides:

Section 3690 provides that every employer and employee, unless otherwise provided, shall be conclusively presumed to have elected to accept the provisions of the compensation law, unless prior to the accident he shall have filed with the Commission a written notice of rejection of the law.

Section 3691 provides that if both employer and employee shall accept the provisions of the law, the employer shall be liable to furnish compensation for personal injury or death of the employee by accident

arising out of and in the course of his employment, and provides that the remedy is exclusive of all other remedies.

Section 3694 (a) defines an employer as "Every person, partnership, association, corporation, trustee, receiver, the legal representatives of a deceased employer, using the service of another for pay \* \* \*"

Section 3695 (a) defines an employee as "Every person in the service of an employer, \* \* \* under any contract of hire, express or implied, oral or written, or under any appointment or election \* \* \*"

Section 3709 (d) provides for compensation to the widow of an employee who dies as a result of accidental injuries arising out of and in the course of his employment.

Section 3700 (b) provides compensation for injuries or death occurring outside Missouri under a contract of employment made in Missouri unless the contract shall otherwise provide.

The Missouri Law covers independent contractors engaged on or about the premises of the employer, Sec. 3698 R. S. Mo. 1939, but excludes independent contractors who are engaged in driving trucks on public highways not under the control of the employer (See Brief 33). The Arkansas Law cover only employees (See Brief 30).

### **The Missouri Award**

At the conclusion of the hearing on February 24th, 1944, the Referee of the Missouri Workmen's Compensation Commission took the case as submitted (R. 232), and entered an award on the 8th day of March, 1944, finding that R. Guy Loudenslager was an employee of Jack Gorum under a contract of employment made in the State of Missouri, and awarded claimants compensation in the sum of \$9,521.00 (R. 232 A, B, C).

Thereupon Jack Gorum, on March 10th, 1944, duly filed his application for review (R. 234 A), and National Mutual Casualty Company, on March 14th, 1944, duly filed its application for review (R. 234 B), and said proceeding was taken as submitted on review on March 10th and March 14th, 1944, by the full Missouri Workmen's Compensation Commission (R. 234 C), and said Missouri Workmen's Compensation Commission entered a final award on August 11th, 1944, finding that the deceased R. Guy Loudenslager was an employee of Jack Gorum and that the contract of employment was entered into in the State of Missouri, and awarded claimants compensation in the sum of \$9,521.00 (R. 234 C, D, 235).

Thereupon, on August 22nd, 1944, Jack Gorum and National Mutual Casualty Company duly filed their notice of appeal from the award of the Missouri Workmen's Compensation Commission to the Circuit Court of Jasper County, Missouri (R. 236 A); and thereafter, on September 5th, 1944, the Secretary of the Missouri Workmen's Compensation Commission transmitted said record, together with certificate on appeal, to the Circuit Court of Jasper County, at Joplin, Missouri, and said transcript on appeal was duly lodged in the Circuit Court of Jasper County on September 6th, 1944 (R. 236 B, 359). Said cause was duly transferred from Jasper County to Cedar County, Missouri, because of the interest of the judges as counsel in said cause (R. 237).

Thereafter, on the 17th day of November, 1944, said cause was heard on appeal in the Circuit Court of Cedar County and an amended judgment entry was made (R. 237-239), affirming the award of the Missouri Workmen's Compensation Commission. Thereafter, on December 19th, 1944, Jack Gorum and National Mutual Casualty Company filed their affidavit for appeal, and on the same day and during the November Term, 1944, of the Circuit Court of Cedar County, and at the same term at which the judgment had been entered,



said court made an order granting an appeal to the Supreme Court of Missouri (R. 1, 2), and fixed the appeal bond at \$15,000.00 (R. 240). Thereafter, on December 23rd, 1944, the appeal bond was filed and duly approved (R. 240). Thereafter, on March 13th, 1945, the Circuit Court of Cedar County made an order extending the time to file the transcript on appeal in the Supreme Court of Missouri from March 19th, 1945, to April 19th, 1945 (R. 240), and on April 17th, 1945, said Court entered an order extending the time to file the transcript on appeal in the Supreme Court from April 19th, 1945, to June 19th, 1945 (R. 241). It was stipulated between the parties, appellants and respondents, that certain exhibits would be filed in the Supreme Court of Missouri under separate cover under Rule 1.05 of the Rules of the Supreme Court of Missouri (R. 241-2).

The case on appeal was duly assigned to Division 1 of the Supreme Court of Missouri, and was argued and submitted to said Court on January 8th, 1946. Thereafter, on February 11th, 1946, Division 1 of the Supreme Court of Missouri entered a judgment and filed its opinion affirming the award of the Missouri Workmen's Compensation Commission (R. 244). On February 26th, 1946, within the time allowed by Rule 1.19 and 2.02 of the Supreme Court of Missouri, petitioners filed their motion for rehearing and to transfer said cause to the Supreme Court of Missouri *en banc*. Said motion for rehearing and to transfer to the Court *en banc* was overruled on March 11th, 1946, and the Court, on its own motion, transferred said cause to the Court *en banc*, under Section 4 of the Amendment of 1890 to Article VI of the Constitution of Missouri (Rev. St. Mo. 1939, Vol. 1, p. 127c), because a Federal question was involved (R. 244). The case was set for argument and was argued before the Supreme Court of Missouri *en banc* on May 23rd, 1946, and was on that day taken by the Court as submitted. On June 10th, 1946, the Supreme Court of Mis-



souri *en banc* entered its judgment, affirming the award of the Missouri Workmen's Compensation Commission and adopting the opinion of Division 1 of the Supreme Court of Missouri theretofore filed in said cause (R. 245). On June 22nd, 1946, within the time allowed by Rule 1.19 of said Court, petitioners filed in said Court their motion for rehearing (R. 253), which was by the Court overruled by an order entered of record on July 8th, 1946 (R. 255).

### **Opinion of Supreme Court of Missouri**

The Supreme Court of Missouri *en banc* held in its opinion that the Arkansas Workmen's Compensation Commission had jurisdiction to make the order refusing compensation (R. 248), and further held that the award of the Arkansas Workmen's Compensation Commission was not subject to collateral attack (R. 248). The Supreme Court of Missouri held that the Missouri Workmen's Compensation Commission was not required to give full faith and credit to the award of the Arkansas Workmen's Compensation Commission because the Arkansas award found that claimants were not entitled to anything under the Arkansas Act (R. 249), and because the Workmen's Compensation Acts of Missouri and Arkansas are different in many respects and, therefore, the finding of the Arkansas Commission, that claimants had no remedy to recover anything for Loudenslager's death under the Arkansas Act, does not mean that they could not be given a remedy therefor by the Missouri Act (R. 249).

### **Judgment of Supreme Court of Missouri**

The Supreme Court of Missouri entered judgment affirming the judgment of the Circuit Court of Cedar County, Missouri (R. 245).

### Jurisdiction of This Court

The jurisdiction of this Court is based on Section 237 of the Judicial Code as amended and reformulated by the Act of February 13th, 1925, C. 229, Section 237, 43 Stat. 937, Title 28, U. S. C. A., Sec. 344 (b), providing that it shall be competent for this Court, by certiorari, to require that there be certified to it for review and determination any cause wherein a final judgment or decree has been rendered by the highest court of a state in which a decision could be had, where any title, right, privilege, or immunity specially set up or claimed by either party under the Constitution, or any treaty or statute, of, or commission held, or authority exercised under, the United States.

The judgment of the Supreme Court of Missouri *en banc* sought to be reviewed was entered on June 10th, 1946 (R. 245). A motion for rehearing was filed in said Court on June 22nd, 1946, within the time prescribed by the rules of the Supreme Court of Missouri (R. 253), and said motion of petitioners for rehearing of said cause was denied by the Supreme Court of Missouri *en banc* on July 8th, 1946 (R. 255), which is the date on which the judgment of the Supreme Court of Missouri in said cause became final. The Supreme Court of Missouri *en banc* was the highest court of the State of Missouri in which a decision could be had in said cause, and in said cause petitioners specially set up and claimed a right under Article IV, Section 1 of the Constitution of the United States— See answers to claim for compensation (R. 7-11), Brief in Supreme Court of Missouri (R. 244-5), and motion for rehearing (R. 253-5), which right was denied petitioners by said Supreme Court of Missouri *en banc*.

Petitioners specially pleaded in their answer to the claim for compensation, filed before the Missouri Workmen's Compensation Commission, their right to have the final, con-

clusive award of the Arkansas Workmen's Compensation Commission accepted as a final and conclusive determination of the issues theretofore adjudicated between the same parties by the Arkansas Workmen's Compensation Commission (R. 7-11). Petitioners in their brief in the Supreme Court of Missouri assigned as error the refusal of the Missouri Workmen's Compensation Commission to give full faith and credit to the final Arkansas award and the issues adjudicated therein and duly argued said question before said Court (R. 244-5). The Supreme Court of Missouri, in its opinion, held:

"Therefore, we must find that the Arkansas Commission had jurisdiction to make the order refusing compensation. Nevertheless, we do not think that the Schendel and Magnolia Petroleum Company cases prohibit the award made herein by the Missouri Commission. (R. 248) \* \* \* We, therefore, hold that the Circuit Court properly affirmed the award of the Missouri Workmen's Compensation Commission as to the employer." (R. 251)

The cases thought to sustain the jurisdiction of this Court are:

*Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430;  
*Williams v. State of North Carolina*, 317 U. S. 287;  
*Chicago, Rock Island & Pac. Ry. v. Schendel*, 270 U. S. 611.

### Questions Presented

#### I

Whether the respondents had one cause of action on account of the death of R. Guy Loudenslager, which, when prosecuted to a valid, final, conclusive award between the parties before the Arkansas Workmen's Compensation Commission, would be entitled to full faith and credit under

Article IV, Section 1 of the Constitution of the United States and the Acts of Congress implementing same, as to all issues that were adjudicated in the Arkansas proceeding and as to all issues that could have been adjudicated in that proceeding, when duly pleaded and proven in a second action between the same parties, seeking an award of compensation on account of the same death before the Missouri Workmen's Compensation Commission, where the Arkansas Workmen's Compensation Law and the Missouri Workmen's Compensation Law both provided for an award of compensation to the widow and minor child of an employee who died as a result of accidental injuries arising out of and in the course of his employment, and both compensation laws define an employee as any person in the service of an employer, under any contract of hire, express or implied, written or oral, and both compensation laws exclude independent contractors driving trucks along public highways, and where the claim adjudicated by the Arkansas Workmen's Compensation Commission was to recover compensation on the ground that deceased was an employee under a contract of hire, and that he died as a result of accidental injuries arising out of and in the course of his employment, in Arkansas, and the Arkansas Workmen's Compensation Commission, after a hearing on the merits, found from the evidence that deceased was not an employee, but was an independent contractor, and the claim before the Missouri Workmen's Compensation Commission was upon the same ground, to-wit: that deceased was an employee under a contract of hire, and that he died as a result of accidental injuries arising out of and in the course of his employment.

## II

Whether the findings that deceased was not an employee under a contract of hire, in a final, conclusive adjudication by the Arkansas Workmen's Compensation Commission,

having jurisdiction of the parties and subject matter, brought to recover an award of compensation under the Arkansas Workmen's Compensation Law on the ground that deceased was an employee under a contract of hire, wherein those issues were duly presented by the claim for compensation and answer thereto filed before said Commission, and were duly contested and presented to said Commission for decision by the evidence, are entitled to full faith and credit, under Article IV, Section 1 of the Constitution of the United States in a subsequent proceeding, between the same parties, filed before the Missouri Workmen's Compensation Commission to recover compensation under the Missouri Workmen's Compensation Law on account of the same death on the ground that deceased was an employee under a contract of hire entered into in the State of Missouri, where the prior final award was duly pleaded and proven in the second action.

### III

Whether the fact that the Arkansas Workmen's Compensation Law and the Missouri Workmen's Compensation Law differed in many particulars not material to the right to compensation in question would except the valid, final, conclusive award of the Arkansas Workmen's Compensation Commission from the requirements of full faith and credit under Article IV, Section 1 of the Constitution of the United States, when duly pleaded and proven in a second action before the Missouri Workmen's Compensation Commission by the same parties, seeking compensation on account of the same death, and where both claims for compensation were brought on the ground that the deceased was an employee under a contract of hire, and the Arkansas Workmen's Compensation Commission in the first action held that he was not and held that he was an independent contractor, and the Missouri Workmen's Compensation Commission in

the second action held that he was an employee, and both the Arkansas Workmen's Compensation Act and the Missouri Workmen's Compensation Act provide for compensation to a widow and child on account of the death of the employee as a result of an accidental injury arising out of and in the course of his employment, and neither the Arkansas Workmen's Compensation Act nor the Missouri Workmen's Compensation Act authorizes an award of compensation to an independent contractor driving a truck along a public highway, as the deceased was in this case.

### **Reasons Relied On for the Allowance of the Writ**

#### **I**

Your petitioners believe that the Supreme Court of the State of Missouri has decided a Federal question of substance in a way probably not in accord with applicable decisions of this Court.

This Court has stated the rule of *res judicata*, as it is applied under Article IV, Section 1 of the Constitution of the United States, as follows:

"The effect of a judgment or decree as *res judicata* depends upon whether the second action or suit is upon the same or a different cause of action. If upon the same cause of action, the judgment or decree upon the merits in the first case is an absolute bar to the subsequent action or suit between the same parties or those in privity with them, not only in respect of every matter which was actually offered and received to sustain the demand, but also as to every ground of recovery which might have been presented. But if the second case be upon a different cause of action, the prior judgment or decree operates as an estoppel only as to matters actually in issue or points controverted, upon the determination of which the judgment or decree was rendered."

The Supreme Court of Missouri held in its opinion that the Arkansas Workmen's Compensation Commission had jurisdiction to make the award it did make, and that such award was not subject to collateral attack, yet said Court denied full faith and credit to that award.

The claim filed before the Arkansas Workmen's Compensation Commission and the claim filed before the Missouri Workmen's Compensation Commission were upon the same cause of action and were between the same parties. Under the above rule, the final Arkansas award was *res judicata* as to all issues that were adjudicated therein, and likewise as to all issues that could have been adjudicated therein. The issue adjudicated by the Arkansas Workmen's Compensation Commission was whether the deceased was an employee or an independent contractor. The Arkansas Workmen's Compensation Commission found that he was not an employee and that he was an independent contractor. The issue before the Missouri Workmen's Compensation Commission was the same, to-wit: whether the deceased was an employee or an independent contractor. The Missouri Workmen's Compensation Commission again litigated this question and found that the deceased was an employee. In so doing, the Missouri Workmen's Compensation Commission violated Article IV, Section 1 of the Constitution of the United States.

## II

The terms of the contract under which R. Guy Loudenslager was working on June 18th, 1941, constituted him an employee of Jack Gorum or an independent contractor doing work for Jack Gorum. This issue was presented to the Arkansas Workmen's Compensation Commission by the claim of respondents and by the answer of petitioners. The issue was duly adjudicated by the Arkansas Workmen's



Compensation Commission, and the final, conclusive award of the Arkansas Workmen's Compensation Commission adjudicating this issue was specially pleaded in the answer of Jack Gorum and the National Mutual Casualty Company to the claim for compensation filed before the Missouri Workmen's Compensation Commission. A duly authenticated copy of the record of the Arkansas Workmen's Compensation Commission was introduced in evidence before the Missouri Workmen's Compensation Commission. Petitioners submit that Article IV, Section 1 of the Constitution of the United States, as construed by this Court, required the Missouri Workmen's Compensation Commission to give full faith and credit to this adjudicated issue and to accept the finding of the Arkansas Workmen's Compensation Commission as conclusively establishing the relationship created by the contract under which deceased was working, and prevented the Missouri Workmen's Compensation Commission from again litigating this issue and finding that R. Guy Loudenslager was an employee under a contract of hire with Jack Gorum.

### III

Your petitioners believe that the Supreme Court of the State of Missouri *en banc* has decided a Federal question of substance not theretofore determined by this Court, in this, that the Supreme Court of Missouri *en banc* has ruled in its judgment and opinion that the valid, final, conclusive award of the Arkansas Workmen's Compensation Commission is excepted from the requirements of full faith and credit under Article IV, Section 1 of the Constitution of the United States and the Acts of Congress implementing same, because the award of the Arkansas Workmen's Compensation Commission denied respondents a recovery and because there are many differences between the Arkansas



Workmen's Compensation Act and the Missouri Workmen's Compensation Act, although these differences are not found to be pertinent or material to the claim for compensation here involved.

It is believed that this Court should determine what judgments and records of one state are excepted from the requirements of full faith and credit when pleaded in a second action in another state. This Court does not seem to have ever excepted a money judgment or award from the requirements of full faith and credit, and the decisions of this Court seem to establish that no judgment or record of one state will be excepted from the requirements of full faith and credit unless the enforcement of that judgment or record in another state will create a serious conflict with the policy of such other state. The enforcement of the final, conclusive award of the Arkansas Workmen's Compensation Commission in the State of Missouri will work no conflict with the policy of the State of Missouri. This is true because both the Arkansas Workmen's Compensation Act and the Missouri Workmen's Compensation Act apply precisely the same to the right of respondents to compensation on account of the death of R. Guy Loudenslager. Both the Arkansas and the Missouri Workmen's Compensation Acts provide for an award of compensation to the widow and minor child of a deceased employee who dies as a result of accidental injuries arising out of and in the course of his employment, and that was the theory upon which both the Arkansas and Missouri compensation claims were prosecuted. The Arkansas Workmen's Compensation Law and the Missouri Workmen's Compensation Law likewise do not provide for compensation on account of the death of an independent contractor driving a truck along a public highway, as R. Guy Loudenslager was doing in this case, and it appears from the record in this case that respondents sought the same remedy in the proceeding before the Missouri

Workmen's Compensation Commission which they had under the Arkansas Workmen's Compensation Law in the proceeding theretofore adjudicated before the Arkansas Workmen's Compensation Commission. Under the facts found by the Arkansas Workmen's Compensation Commission, no award of compensation could be made under the Missouri Workmen's Compensation Law; and likewise, under the findings made by the Missouri Workmen's Compensation Commission, compensation would be awarded under the Arkansas Workmen's Compensation Law.

Your petitioners believe that the question involved in this case is one of substance because the judgment and opinion of the Supreme Court of Missouri denies your petitioners a Federal right. The petitioners specially pleaded their right to have the final, conclusive award of the Arkansas Workmen's Compensation Commission given full faith and credit in the subsequent action before the Missouri Workmen's Compensation Commission under Article IV, Section 1 of the Constitution of the United States. The judgment of the Supreme Court of Missouri denies your petitioners this right.

Your petitioners believe that the question involved is of importance and should be determined by this Court because it is believed that orderly procedure requires that a cause of action or an issue duly adjudicated by a tribunal having jurisdiction should be conclusive in a second action between the same parties and should not be again litigated in a subsequent action.

### Prayer

WHEREFORE, petitioners pray that a writ of certiorari be issued by this Court directed to the Supreme Court of Missouri to the end that said opinion and judgment of the Supreme Court of Missouri *en banc*, in said cause of Ruby

O. Loudenslager and Charlotte Loudenslager, respondents, vs. Jack Gorum and National Mutual Casualty Company, appellants, No. 39,532, be reviewed by this Court, as provided by law, and that upon such review said judgment be reversed, and that petitioners have such other relief as to this Court may seem appropriate.

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## **BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI**

### **Opinion of the Court Below**

The opinion of the Supreme Court of Missouri in said cause of Ruby O. Loudenslager and Charlotte Loudenslager, (claimants) respondents, vs. Jack Gorum and National Mutual Casualty Company, (employer and insurer) appellants, which petitioners here seek to have reviewed, is reported in 195 S. W. (2d) 498, and appears on pages 246 to 253 of the transcript of the printed record filed herewith. Said opinion has not yet been published in the official State Reports.

### **Statement of the Case**

The essential facts of the case are fully stated in the petition for writ of certiorari, and in the interest of brevity are not repeated here. Reference will be made to such facts on the points involved in the course of the argument which follows.

### **Specifications of Error to Be Urged**

The Supreme Court of Missouri *en banc*, in its said opinion in said cause, erred:

1. In holding and deciding that the Missouri Workmen's Compensation Commission was not required to give full faith and credit, under Article IV, Section 1 of the Constitution of the United States, to the final, conclusive award of the Arkansas Workmen's Compensation Commission in a subsequent case on the same cause of action between the same parties.

2. In holding that the findings of the Arkansas Workmen's Compensation Commission on matters in issue, on

the determination of which the Arkansas award was rendered, were not conclusive between the same parties in the subsequent Missouri proceeding.

3. In holding that the award of the Arkansas Workmen's Compensation Commission was excepted from the requirements of Article IV, Section 1 of the Constitution of the United States, because the Arkansas award denied compensation and there was some difference in the Arkansas law and the Missouri law.

### **Summary of the Argument**

#### **I**

The respondents filed a claim for compensation before the Arkansas Workmen's Compensation Commission, seeking an award of compensation on account of the death of R. Guy Loudenslager. That proceeding was prosecuted to a final, conclusive award between the parties in Arkansas. Respondents filed another claim for compensation before the Missouri Workmen's Compensation Commission, seeking an award of compensation on account of the death of R. Guy Loudenslager. Petitioners duly pleaded and proved the final, conclusive award of the Arkansas Workmen's Compensation Commission in the proceeding before the Missouri Workmen's Compensation Commission. The Missouri Workmen's Compensation Commission refused to accept the final Arkansas award as conclusive between the parties and again litigated that issue. The Arkansas Workmen's Compensation Commission denied compensation on the finding that the deceased was not an employee, but was an independent contractor. The Missouri Workmen's Compensation Commission entered an award in favor of respondents on the finding that the deceased was an employee.

Article IV, Section 1 of the Constitution of the United States, required that the final, conclusive award of the

Arkansas Workmen's Compensation Commission, when duly pleaded and proven in the subsequent proceeding before the Missouri Workmen's Compensation Commission, be given full faith and credit. The Missouri Workmen's Compensation Commission and the Supreme Court of Missouri denied full faith and credit to the Arkansas award, and held that the issue could be litigated a second time. In so ruling, the judgment of the Supreme Court of Missouri violated Article IV, Section 1 of the Constitution of the United States.

*Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 439, 443, 444, 445.

*Roche v. McDonald*, 275 U. S. 449, 454, 455.

*Christmas v. Russell*, 5 Wall 290, 301, 302.

*Equitable Life Assur. Soc. of U. S. v. Pool*, 145 S. W. (2d) 25, 27 (Ark.)

*State ex Rel. v. Fulbright*, 169 S. W. (2d) 59 (Mo.)

*Rutherford v. Tobin Quarries*, 82 S. W. (2d) 918, 923 (Mo.)

*Irvan v. Bounds*, 170 S. W. (2d) 674, 677 (Ark.)

*Maltz v. Jackoway-Katz Cap Co.*, 82 S. W. (2d) 909, 916 (Mo.)

Article IV, Section 1 of the U. S. Constitution.

Act 319 Laws Arkansas 1939, Section 25 (a).

## II

Respondents filed a claim for compensation before the Arkansas Workmen's Compensation Commission to recover compensation on account of the death of R. Guy Loudenslager. That proceeding was prosecuted to a final, conclusive award in Arkansas. Respondents also filed a proceeding before the Missouri Workmen's Compensation Commission to recover on account of the same death. Petitioners duly pleaded and proved the final, conclusive

award of the Arkansas Workmen's Compensation Commission in the Missouri proceeding. The Missouri Workmen's Compensation Commission and the Supreme Court of Missouri refused to give full faith and credit to the final, conclusive Arkansas award; they held the issue determined in the Arkansas proceeding could be again litigated. The parties in both proceedings were the same, and even though the Missouri and Arkansas proceedings were not upon the same cause of action, Article IV, Section 1 of the Constitution of the United States required the Missouri Workmen's Compensation Commission and the Supreme Court of Missouri to give full faith and credit to that award on the matters in issue, upon the determination of which the Arkansas award was entered. The matter in issue, upon the determination of which the Arkansas award was entered, was whether the deceased was an employee or an independent contractor. The Arkansas Commission found that he was not an employee. The Missouri Workmen's Compensation Commission had before it the same issue, and the Missouri Workmen's Compensation Commission found that the deceased was an employee.

*Chicago, Rock Island & Pacific Ry. v. Schendel*, 270 U. S. 611, 616, 617;

*Carpenter v. Strange*, 141 U. S. 87, 102, 103;

*Gates v. Mortgage Loan & Inv. Agency*, 139 S. W. (2d) 19, 23 (Ark.);

*State ex rel, v. Fulbright*, 169 S. W. (2d) 59 (Mo.)

*Rutherford v. Tobin Quarries*, 82 S. W. (2d) 918, 923.

Article IV, Section 1 of the U. S. Constitution.

### III

Respondents filed a claim for compensation on account of the death of R. Guy Loudenslager before the Arkansas Workmen's Compensation Commission, which was prose-

cuted to a final, conclusive award between the parties in Arkansas. They filed a second action seeking an award of compensation on account of the same death before the Missouri Workmen's Compensation Commission. Petitioners, in their answer before the Missouri Workmen's Compensation Commission, duly pleaded the final, conclusive award of the Arkansas Workmen's Compensation Commission, and on hearing before the Missouri Workmen's Compensation Commission introduced a duly authenticated copy of the final, conclusive award of the Arkansas Commission. The Missouri Supreme Court, in its opinion, held that the final, conclusive award of the Arkansas Workmen's Compensation Commission was excepted from the requirements of Article IV, Section 1 of the Constitution of the United States, and that the Missouri Courts did not have to give it full faith and credit, because the Arkansas award denied compensation and held that the claimants were not entitled to compensation under the Arkansas Act, and because the Missouri Workmen's Compensation Act and the Arkansas Workmen's Compensation Act differed in many respects, and that the finding of the Arkansas Commission, that the claimants were not entitled to compensation under the Arkansas Act, does not mean that they could not be given a remedy therefor by the Missouri Act.

The issue in both proceedings was whether the deceased was an employee or an independent contractor. The Arkansas Workmen's Compensation Commission, after hearing, found that he was not an employee. The Missouri Workmen's Compensation Commission, after hearing, found that he was an employee. Both Acts provided for compensation to respondents under the facts found by the Missouri Workmen's Compensation Commission, and both Acts denied compensation to respondents under the facts found by the Arkansas Workmen's Compensation Commission.



Neither Act provided for compensation on account of the death of an independent contractor.

This Court is the final arbiter of the extent to which full faith and credit must be given to the judgments of a sister-state, and likewise as to what judgments may be excepted from the requirements of full faith and credit. The Arkansas award did not conflict with any public policy of the State of Missouri and, therefore, Article IV, Section 1 of the Constitution of the United States required that the Missouri Courts give full faith and credit to that award. In attempting to except that award from the requirements of full faith and credit, the judgment and opinion of the Supreme Court is brought into conflict and violates Article IV, Section 1 of the Constitution of the United States.

*Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 438;  
*Williams v. State of North Carolina*, 317 U. S. 287, 302;  
*Riley v. New York Trust Co.*, 315 U. S. 343, 348;  
*Milwaukee County v. White Co.*, 296 U. S. 268, 274;  
*Chicago, Rock Island & Pacific Ry. v. Schendel*, 270 U. S. 611, 616;  
*Hood v. McGhee*, 237 U. S. 611  
*Olmstead v. Olmstead*, 216 U. S. 386;  
*U. S. v. California & Oregon L. Co.*, 192 U. S. 355;  
*Clarke v. Clarke*, 178 U. S. 186;  
*Werlein v. New Orleans*, 177 U. S. 390, 398, 399;  
*Huntington v. Atrill*, 146 U. S. 661, 666, 685;  
*Wisconsin v. Pellican Ins. Co.*, 127 U. S. 265;  
*State ex rel. v. Fulbright*, 169 S. W. (2d) 59;  
*Rutherford v. Tobin Quarries*, 82 S. W. (2d) 918, 923.

## Argument

### I

This proceeding grows out of a claim filed December 19th 1941, by respondents before the Missouri Workmen's Com-

pensation Commission, seeking an award of compensation under the Missouri Workmen's Compensation Law on account of the death of R. Guy Loudenslager.

Prior to filing the Missouri claim, respondents, on July 23rd, 1941, filed a claim for compensation before the Arkansas Workmen's Compensation Commission, to recover compensation under the Arkansas Workmen's Compensation Law on account of the same death.

Both claims sought an award of compensation on the ground that R. Guy Loudenslager was an employee under a contract of hire (R. 3-4, 6). Employer's and Insurer's Exhibit 1 (R. 22, 297). The Arkansas proceeding was first prosecuted to an award on February 16th, 1942—Employer's and Insurer's Exhibit 1 (R. 22, 290). No appeal was prosecuted from the Arkansas award—Employer's and Insurer's Exhibit 1 (R. 22, 306), and it became final and conclusive between the parties on March 18th, 1942. Sec. 25 (a), Act 319 Laws of Arkansas 1939 (R. 14, 19).

The Arkansas award was pleaded in the Missouri proceeding (R. 7-11), and a duly authenticated copy of the award and record of the Arkansas Workmen's Compensation Commission was introduced in evidence (R. 22). Petitioners claim that it was the duty of the Missouri Workmen's Compensation Commission to accept this final Arkansas award as conclusively establishing the relationship of deceased to petitioner Jack Gorum, under Article IV, Section 1 of the Constitution of the United States and the Acts of Congress implementing same. 28 U. S. C. A., Sec. 688. Regardless of such proof of the final Arkansas award, the Missouri Workmen's Compensation Commission proceeded to again litigate the issue finally adjudicated by the Arkansas award, and made a finding contrary to that award (R. 232 A-234 A, 234 C-234 D).

The claims filed in these proceedings show that the parties were the same (R. 3-4; Employer's and Insurer's Exhibit 1, R. 22, 297). Respondents had one cause of action on account of the death of R. Guy Loudenslager. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 443, 444, 445. They could seek their remedy in either Arkansas or Missouri, but having chosen to seek it in Arkansas, where the award was final and conclusive—Act 319 Laws Ark. 1939, Sec. 25 (A) (R. 14, 19), the full faith and credit clause precludes them from again seeking a remedy in Missouri upon the same ground. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 444.

The rule laid down by the applicable decisions of this Court, in construing Article IV, Section 1 of the Constitution of the United States and the Act of Congress implementing same, is that a final, conclusive judgment of one state, when duly pleaded and proven in a subsequent action, between the same parties on the same cause of action brought in another state, must be given the same force and effect in the second action that it had in the state where rendered, under the principle of *res judicata*.

*Christmas v. Russell*, 5 Wall. 290, 301, 302.

*Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 439.

*Roche v. McDonald*, 275 U. S. 449, 454, 455.

The award was conclusive and final between the parties in Arkansas. Act 319 Laws Arkansas 1939, Sec. 25 (b) (R. 14, 19).

Under the rule of *res judicata* in the State of Arkansas, the award conclusively established that deceased was not an employee. *Equitable Life Assur. Soc. of U. S. v. Pool*, 143 S. W. (2d) 25, 27.

The same validity and effect should have been given to the Arkansas award by the Missouri Workmen's Compensation Commission.

Such validity and effect was denied the Arkansas award and the issue was again litigated.

The recognition of the Arkansas award by the Missouri Workmen's Compensation Commission and the granting it full faith and credit would not violate or conflict with any policy of the State of Missouri. This is so because the award of compensation was denied by the Arkansas Workmen's Compensation Commission because it found deceased was not an employee, but was an independent contractor—Employer's and Insurer's Exhibit 1 (R. 22, 296). The policy of Missouri, as shown by its compensation law and decisions construing same, is to deny compensation to independent contractors. *State ex rel. v. Fulbright*, 169 S. W. (2d) 59; *Rutherford v. Tobin Quarries*, 82 S. W. (2d) 918, 923.

Under the facts found by the Arkansas Workmen's Compensation Commission, neither Missouri nor Arkansas law provides for compensation. Under the facts found by the Missouri Workmen's Compensation Commission, both Missouri and Arkansas laws provide for compensation to the widow and child.

It would seem that the only reason why the Missouri Supreme Court and the Missouri Workmen's Compensation Commission were unwilling to grant full faith and credit to the Arkansas award was because they were not agreeable to accepting the finding of fact made by the Arkansas Workmen's Compensation Commission.

Both Arkansas and Missouri apply the same rule of law to determine whether a workman is an employee or an independent contractor. *Irvan v. Bounds*, 170 S. W. (2d) 674, 677; *Maltz v. Jackoway-Katz Cap Co.*, 82 S. W. (2d) 909, 916.

Petitioners submit that the Supreme Court of Missouri violated Article IV, Section 1 of the Constitution of the

United States, and the Act of Congress implementing same, by denying full faith and credit to the Arkansas award, and the judgment of said Court should be reversed.

## II

However, if it should be thought that the Arkansas proceeding and the Missouri proceeding were upon different causes of action, the Arkansas award was nevertheless entitled to full faith and credit. The parties were the same—Employer's and Insurer's Exhibit 1 (R. 22, 297, 3-4). The matter in issue, upon the determination of which the Arkansas award was rendered, was whether the deceased was an employee or an independent contractor. The Arkansas Workmen's Compensation Commission found he was not an employee—Employer's and Insurer's Exhibit 1 22, 296). It found he was an independent contractor. It denied compensation on a trial on the merits because of these findings.

If the Arkansas award had been given full faith and credit and the issues there adjudicated had been accepted as final and conclusive, no award of compensation could have been made by the Missouri Workmen's Compensation Commission. *State ex Rel. v. Fulbright*, 169 S. W. (2d) 59; *Rutherford v. Tobin Quarries*, 82 S. W. (2d) 918, 923. This is so because the Missouri Workmen's Compensation Law does not provide compensation for the injury or death of an independent contractor not engaged on or about the premises of the employer.

The parties being the same, the matters in issue, on the determination of which the Arkansas award was rendered, in the first action are conclusive in the second action when pleaded and proven. *Carpenter v. Strange*, 141 U. S. 87, 102, 103; *Chicago, Rock Island & Pacific Ry. Co. v. Schendel*, 270 U. S. 611, 617; *Gates v. Mortgage Loan & Ins.*

*Agency*, 139 S. W. (2d) 19, 23 (Ark.). Whether deceased was an employee was the matter in issue, on the determination of which both the Arkansas and the Missouri awards were rendered. The issue in both proceedings was the same. *Chicago, R. I. & P. Ry. Co. v. Schendel*, 270 U. S. 616.

Your petitioners, therefore, believe that the judgment of the Supreme Court of Missouri conflicts with the applicable decision of this Court and violates Article IV, Section 1 of the Constitution of the United States.

### III

The Supreme Court of Missouri, in its opinion, held that the Arkansas Workmen's Compensation Commission had jurisdiction and that the Arkansas award was not subject to collateral attack (R. 248). Yet said Court refused to give that award full faith and credit (R. 248-9). The opinion of said Court has excepted the Arkansas award from the requirements of full faith and credit. The reasons for excepting this final, conclusive award from the requirement of full faith and credit are stated in the opinion to be because the Arkansas award denied a recovery of compensation, and the Arkansas and Missouri compensation laws differ in many respects, and the right to compensation under the Missouri law was not involved in the Arkansas proceeding, and the right to compensation under the Arkansas law was not involved in the Missouri proceeding. It was not held or contended by the Missouri Supreme Court that the Missouri Workmen's Compensation Law granted respondents any remedy to recover an award of compensation which was not also granted respondents in the Arkansas proceeding under the Arkansas Workmen's Compensation Law.

It is for this Court to determine the extent to which full faith and credit must be given to the judgments and records of the State of Arkansas by the Courts of Missouri, as well as to determine what judgments and records shall be excepted from the requirement of full faith and credit. *Williams v. State of North Carolina*, 317 U. S. 287, 302; *Milwaukee County v. White Co.*, 296 U. S. 268, 274.

It was not thought by this Court, in *Chicago, Rock Island & Pacific Ry. v. Schendel*, *supra*, that the fact that there was a difference between the Iowa Workmen's Compensation Law and the Federal Employers' Liability Act would except the Iowa compensation award from the requirements of full faith and credit. Nor was it thought in the *Schendel* case that the fact that the right to recover damages under the Federal Employers' Liability Act was not involved in the Iowa compensation proceeding, and the right to recover compensation under the Iowa Compensation Law was not involved in the Minnesota proceeding brought under the Federal Employers' Liability Act, created any exception to the requirement of full faith and credit under Article IV, Section 1 of the Constitution of the United States.

Article IV, Section 1 of the Constitution of the United States and the Act of Congress implementing same have made it mandatory for the Courts of Missouri to give the final, conclusive award of the Arkansas Workmen's Compensation Commission the same force and effect it has in Arkansas, when pleaded and proven in the Missouri compensation proceeding, under the principle of *res judicata*. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430; *Chicago, R. I. & P. Ry. Co. v. Schendel*, 270 U. S. 611, 616; *Riley v. New York Trust Co.*, 315 U. S. 343, 348.

Under the principle of *res judicata*, this Court held, in *U. S. v. California and Oregon Land Co.*, 192 U. S. 355, that a decree in a former action in favor of defendant, deny-



ing affirmative relief, was *res judicata* in a subsequent action, and a like ruling was made by this Court in *Werlein v. New Orleans*, 177 U. S. 390, 398, 399.

This Court has not seen fit to except a money judgment in a civil suit from the requirements of full faith and credit. *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 438, although some exceptions to the requirements of full faith and credit have been established.

As was observed in *Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, the exceptions to the requirements of full faith and credit have been few and far between.

Those cases which have been established as exceptions to the requirements of full faith and credit are for the most part cases where an attempt is made to enforce the penal laws of one State in the courts of a sister-State, by use of the requirements of Article IV, Section 1 of the Constitution of the United States. *Wisconsin v. Pellican Ins. Co.*, 127 U. S. 265; *Huntington v. Atrill*, 146 U. S. 661, 666, 685. Or where the effect of full faith and credit will be to allow the courts of one State to control the transfer of real estate located in sister-States. *Clarke v. Clarke*, 178 U. S. 186; *Olmstead v. Olmstead*, 216 U. S. 386; *Hood v. McGhee*, 237 U. S. 611.

Judgments excepted from the requirement of full faith and credit seem to be limited to such judgments, the enforcement of which will seriously conflict with the policy of the State in which their enforcement is sought.

In this case it is impossible to harmonize the two awards. The granting of full faith and credit to the Arkansas award by the Missouri Courts will not do violence to or conflict with any policy of the State of Missouri, because Missouri denies compensation to independent contractors. *State ex rel. v. Fulbright*, 169 S. W. (2d) 59; *Rutherford v. Tobin Quarries*, 82 S. W. (2d) 918, 923.



The judgment and opinion of the Supreme Court of Missouri not only conflicts with applicable decisions of this Court construing Article IV, Section 1 of the Constitution of the United States and the Act of Congress implementing same, it demonstrates a positive policy to deny full faith and credit to all compensation awards which deny compensation. This is true because it will be difficult to find two workmen's compensation laws which do not differ in many respects. This opinion will, if allowed to remain unreversed, stand as a precedent for the Workmen's Compensation Commission of Missouri to deny full faith and credit to all awards of other States which deny compensation. It will no doubt be so construed by the Missouri Workmen's Compensation Commission and will be so applied thereby, resulting in the confusion and disrespect for the law which the full faith and credit provision of the Constitution was adopted to eliminate.

### **In Conclusion**

In conclusion, your petitioners earnestly urge that the question here presented does not grow out of any conflict between the Workmen's Compensation Law of the State of Arkansas and the Workmen's Compensation Law of the State of Missouri, because both the Arkansas Workmen's Compensation Law and the Missouri Workmen's Compensation Law provide for an award of compensation to the widow and child of a deceased employee whose death results from an accidental injury arising out of and in the course of his employment, and both Workmen's Compensation Laws deny an award of compensation for the death of an independent contractor from accidental injuries arising out of and in the course of his work while driving a truck along a public highway, as R. Guy Loudenslager was doing in this case. Neither does the question here involved arise out of any conflict or difference between the

public policy of the State of Arkansas and the State of Missouri in reference to granting of compensation to employees. This is so because it is the policy of both States to deny compensation to the widow and child of a deceased workman under the facts found by the Arkansas Workmen's Compensation Commission, and it is the policy of both States to grant compensation to the widow and child of a deceased employee under the facts found by the Missouri Workmen's Compensation Commission. From this it appears that the question here results solely from the fact that the Arkansas Workmen's Compensation Commission believed from the evidence, after the hearing on the merits, that the deceased was not an employee, and because the Missouri Workmen's Compensation Commission refused to accept that final award as conclusive and again adjudicated the same issue. The same rule of law is applied in both Arkansas and Missouri in determining who is an employee under the Workmen's Compensation Laws of these States. It is not enough that the Courts of Missouri disagree with the finding of fact by the Arkansas Workmen's Compensation Commission to base a denial of full faith and credit to the final award of the Arkansas Workmen's Compensation Commission on that ground.

Your petitioners, therefore, respectfully urge that the writ of certiorari prayed for should be issued, to the end that this Court may review the judgment of the Supreme Court of the State of Missouri in this case.

Respectfully submitted,

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CHARLES ELMORE COOPER  
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# In the Supreme Court of the United States

October Term, 1946.

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JACK GORUM and NATIONAL MUTUAL CASUALTY COMPANY,  
*Petitioners,*

vs.

RUBY O. LOUDENSLAGER and CHARLOTTE LOUDENSLAGER,  
*Respondents.*

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RESPONDENTS' BRIEF IN OPPOSITION TO PETI-  
TION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF MISSOURI.

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## INDEX.

	PAGE
Respondents' statement of the case.....	1
Summary of the argument.....	8
Argument .....	10

### Cases Cited.

Cromwell v. County of Sac, 94 U. S. 351, 353, 24 L. Ed. 195 .....	8, 9, 12
Jones v. Securities and Exchange Comm., 298 U. S. 1, 18, 56 S. Ct. 654, 80 L. Ed. 1015.....	9, 16
Kemper v. Gluck, 327 Mo. 733, 39 S. W. (2d) 330, certiorari denied Gluck v. Kemper, 284 U. S. 649, 52 S. Ct. 29.....	8, 9, 13
Magnolia Petroleum Co. v. Hunt, 320 U. S. 430, 64 S. Ct. 208 .....	9, 17
Mercoid Corp. v. Mid-Continent Inv. Co., 320 U. S. 661, 64 S. Ct. 268, 274, 88 L. Ed. 376.....	8, 9, 12
Sayles v. Steel Co. (banc), 128 S. W. (2d) 1040.....	8, 9, 13
Williams v. The State of North Carolina, 325 U. S. 226, 65 S. Ct. 1092.....	8, 9, 14
Yellow Cab Transit Co. v. Overcash (8th Cir.), 133 Fed. (2d) 228, 232.....	8, 9, 14

# REPORT

1910

1. The first part of the report is devoted to a general survey of the situation in the country.
2. The second part is devoted to a detailed study of the various branches of the economy.
3. The third part is devoted to a study of the social and political conditions.

## CONCLUSIONS

The results of the investigation show that the country is in a state of economic depression. The various branches of the economy are all suffering from a general decline. The social and political conditions are also in a state of depression. The government is unable to carry out its duties, and the people are suffering from poverty and distress. The situation is very serious, and it is necessary to take immediate steps to remedy the situation. The first step is to increase the production of goods and services. This can be done by encouraging the various branches of the economy to produce more. The second step is to improve the social and political conditions. This can be done by increasing the power of the government and by improving the lives of the people. The third step is to increase the foreign exchange reserves. This can be done by increasing the exports and decreasing the imports. These steps are necessary to bring the country out of its depression and to restore its economic and social stability.

# **In the Supreme Court of the United States**

**October Term, 1946.**

---

**JACK GORUM and NATIONAL MUTUAL CASUALTY COMPANY,**  
*Petitioners,*

**vs.**

**RUBY O. LOUDENSLAGER and CHARLOTTE LOUDENSLAGER,**  
*Respondents.*

---

## **RESPONDENTS' BRIEF IN OPPOSITION TO PETI- TION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI.**

---

**No. 575.**

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### **RESPONDENTS' STATEMENT OF THE CASE.**

Petitioners' statement fails to fairly inform the Court:

(1) The Arkansas award dealt with an arrangement entered into between petitioner Gorum and the deceased Loudenslager in Bentonville, Arkansas, about February 1, 1940,

(2) The Missouri award was bottomed on a later arrangement between them entered into at Carthage, Missouri, in April, 1941, some months after the Arkansas arrangement had terminated,



(3) Respondents dismissed their claim before the Arkansas Workmen's Compensation Commission before submission about six weeks before its award was handed down.

We point to the record:

On July 23, 1941, Mrs. Loudenslager, in behalf of herself and child, Charlotte Loudenslager, the respondents here, as dependents of R. Guy Loudenslager, commenced proceedings before the Arkansas Workmen's Compensation Commission for his death from the accident of June 18, 1941 (R. 297). Petitioner Gorum filed a response to their claim asserting that it was controverted because Loudenslager was not in the employ of and was not engaged in any business for Gorum at the time of his injury (R. 299). Hearing of the claim began at Bentonville, Arkansas, December 15th and continued until December 17th, 1941.

During the course of the hearing it developed that Mr. Loudenslager, the deceased, originally entered the service of Mr. Gorum early in 1940 and continued until about January 18, 1941, when, because of some misunderstanding, Mr. Loudenslager withdrew one of his trucks from Mr. Gorum's service and quit (R. 24). It also developed that several months later Mr. Gorum re-employed Mr. Loudenslager at his home at Carthage, Missouri (R. 25), and that his re-employment continued until the fatal accident. Respondents requested that the hearing be continued, and the proceedings were adjourned to January 12, 1942 (R. 26). The testimony showed that Chairman Peel of the Arkansas Workmen's Compensation Commission demanded that Mrs. Loudenslager deposit a bond of \$1,000 with the Commission, stating he was requiring this because she was a non-resident of Arkansas, and he expressly ordered and stated at the time that in the event

of her failure to "deposit such a bond before the conclusion of the entire, of the hearing of the entire proceedings before him, the claims would be dismissed. A little later, after some discussion in which Mrs. Loudenslager's financial condition was laid before him, he then stated he would reduce the cash bond he had requested of her to \$750, and we told him it was impossible for her to put up any sort of cash bond, and he stated that unless that was done he would dismiss this claim, and that this money had to be up on January 3, 1942, a date before the date to which the Arkansas hearing had been adjourned to" (R. 27).

December 19, 1941, respondents filed their claim for compensation under the Missouri Workmen's Compensation Act with the Missouri Compensation Commission (R. 2-6).

January 3, 1942, while the claim was still pending and undisposed of before the Arkansas Commission, Mrs. Loudenslager for herself and as guardian of Charlotte Loudenslager, mailed to the Arkansas Commission an outright dismissal of the proceedings before it without prejudice (R. 301-302) which, omitting signature, is as follows:

"Before Arkansas Workmen's Compensation Commission.

Employee, Guy Loudenslager

Employer, Arkansas Traveler Truck Lines

Insurer, National Mutual Casualty Company.

Comes now Ruby O. Loudenslager, individually as widow, and as guardian of Charlotte Loudenslager, minor dependent of deceased employee, Guy Loudenslager, by her attorneys, and dismisses the above captioned claim for compensation and death benefits, without prejudice."

January 12, 1942, petitioner Gorum filed in said proceeding an "amended response" alleging that the Arkansas Commission had assumed jurisdiction of the controversy, that a hearing before it had been held at Bentonville, December 15, 16 and 17, 1941, which was not completed and had been continued until January 12, 1942, to afford claimants opportunity to submit further evidence, that on December 19, 1941, claimants had filed with the Missouri Workmen's Compensation Commission a claim involving the same controversy, that Gorum had been notified to plead before the Missouri Commission in response thereto, and that he will be compelled to do so at great inconvenience and cost unless the Arkansas Commission retains jurisdiction and determines the controversy, so as to avoid a multiplicity of suits (R. 303, 306).

January 24, 1942, in said Arkansas proceeding an order was entered by Mr. Peel, commissioner, reciting that, on that date "claimants' motion to dismiss" and petitioners' objections thereto and his prayer for final disposition of said claim, came on for determination, and that "upon consideration of the briefs filed by claimants and the argument of counsel for respondent claimants' motion to dismiss is denied because (1) claimants have made no tender of the accrued costs and (2) that it is the commission's duty to ascertain the rights of the parties." (R. 302).

February 6, 1942, respondents' counsel sent a telegram (Exhibit "E," R. 31-32a) to Mr. Peel, Chairman of the Workmen's Compensation Commission, Bentonville, Arkansas, protesting and objecting to any further exercise of authority or jurisdiction by the Arkansas Commission in the matter, and on the same day, by registered letter (Exhibits "F," "G"; R. 33-36), sent a formal pro-

test to any exercise of jurisdiction in the matter by the Arkansas Commission.

### **The Arkansas Award.**

Notwithstanding the dismissal of the claim before it before submission and the protests of Mrs. Loudenslager and her daughter, the Arkansas Workmen's Compensation Commission nevertheless continued to exercise jurisdiction, and on February 16, 1942, Mr. Peel entered an order in said Arkansas proceeding reciting that the parties are bound by the provisions of the Arkansas workmen's compensation law, that the employer, Jack Gorum, had secured payment of compensation benefits through a policy of insurance issued by National Mutual Casualty Company, that the relationship between Loudenslager and Gorum, d/b/a Arkansas Traveler Truck Lines, was established February 1, 1940, in Bentonville, and was that of independent contractor and contractee, that Loudenslager suffered an accidental injury June 18, 1941, resulting in his death the following day, and that as he was not an employee of Gorum, but an independent contractor, the claim of his widow and minor child should be and is denied and their claim dismissed (Ex. 1, R. 290-296).

The Arkansas Commission specifically found (R. 294-295):

"That Guy Loudenslager entered into an arrangement with Jack Gorum d/b/a the Arkansas Traveler Truck Line in Bentonville, Benton County, Arkansas, the principal and only place of business and residence of Jack Gorum, on or about February 1, 1940, and that the relationship between Guy Loudenslager and Jack Gorum d/b/a the Arkansas Travelers Truck Line at the time of the accidental injury and death

of Guy Loudenslager was that of independent contractor and contractee."

It also made this conclusion of law (R. 295):

"It is not disputed that the contractual relationship between the deceased, Guy Loudenslager, and Jack Gorum d/b/a the Arkansas Traveler Truck Line was entered into in Bentonville, Benton County, Arkansas, on or about February, 1940."

#### **The Missouri Award.**

In his several answers (R. 7-10) to the claims before the Missouri Workmen's Compensation Commission, petitioner Gorum did not deny that his operations were under the Missouri Act or that he was a major employer under the Missouri Act. The insurer, the petitioner National Mutual Casualty Company, in its separate answer before that Commission (R. 10-11) denied that it was the insurer and alleged that it had no compensation coverage on the operations of Mr. Gorum in the State of Missouri.

The insurer's binder (R. 207-208) was read in evidence at the hearing before the Missouri Commission. It is: "Dear Mr. Gorum: The National Mutual Casualty Company is hereby bound and agrees to pay any loss created or occurring to the Arkansas Traveler Truck Line, of Bentonville, Arkansas, from April 16, 1941, to June 25, 1941. This binder covers the Arkansas Traveler Truck Line the same as if their Workmen's Compensation Policy had been issued."

Mrs. Loudenslager, at the hearing of the claim before the Missouri Workmen's Compensation Commission, testified that Mr. Loudenslager first started to work driving a truck for Mr. Gorum in the early part of 1940, this period of his employment ending in January, 1941, when

Mr. Loudenslager quit Mr. Gorum's services because he was not getting "back hauls" and because "Mr. Gorum gave him checks that were continually bouncing back" (R. 131); that a number of times after Mr. Loudenslager quit Mr. Gorum, Mr. Gorum came to their home in Carthage, Missouri, and she heard their conversations (R. 132) where it was agreed between her husband and Mr. Gorum that he was to go back to work for him; that was about the middle of April, 1941 (R. 133). This and other testimony fully supported the finding of the Missouri Workmen's Compensation Commission that Mr. Loudenslager was employed by Mr. Gorum under a contract of employment made in the State of Missouri (R. 233).

#### Opinion of the Supreme Court of Missouri.

The Supreme Court of Missouri held that the Arkansas award was not *res adjudicata* of the issues before the Missouri Commission because:

(1) Two separate contracts of employment were involved, the Arkansas ruling being based on a contract of employment entered into between the deceased Loudenslager and petitioner Gorum in that state, while the Missouri award was based on a later arrangement between them made in Missouri.

(2) The finding by the Arkansas Commission that claimants had no remedy under the Arkansas Act did not mean they had no remedy under the Missouri Act.

(3) The State of Missouri had sufficient interest to justify the enforcement of its own Compensation Act in this case.

## SUMMARY OF THE ARGUMENT.

### I.

Neither the Workmen's Compensation Commission of Missouri nor the courts of that state were bound by the finding of the Arkansas Workmen's Compensation Commission that the relationship between deceased and Mr. Gorum was that of independent contractor and contractee because two separate claims were involved.

*Cromwell v. County of Sac*, 94 U. S. 351, 353, 24 L. Ed. 195.

*Mercoid Corp. v. Mid-Continent Inv. Co.*, 320 U. S. 661, 64 S. Ct. 268, 274, 88 L. Ed. 376.

### II.

Under the public policy of Missouri its Workmen's Compensation Commission alone has the power to find facts on which an award under the Missouri Act is to be based, and Missouri had sufficient interest to justify the enforcement of its own act in this case.

*Kemper v. Gluck*, 327 Mo. 733, 39 S. W. (2d) 330, certiorari denied *Gluck v. Kemper*, 284 U. S. 649, 52 S. Ct. 29.

*Sayles v. Steel Co. (banc)*, 128 S. W. (2d) 1040.

*Williams v. The State of North Carolina*, 325 U. S. 226, 65 S. Ct. 1092.

*Yellow Cab Transit Co. v. Overcash* (8th Cir.), 133 Fed. (2d) 228, 232.



## III.

The finding of the Arkansas Commission that deceased was an independent contractor was not binding on the Missouri Workmen's Compensation Commission.

*Cromwell v. County of Sac*, 94 U. S. 351, 353, 24 L. Ed. 195.

*Mercoid Corp. v. Mid-Continent Inv. Co.*, 320 U. S. 661, 64 S. Ct. 268, 88 L. Ed. 376.

*Kemper v. Gluck*, 327 Mo. 733, 39 S. W. (2d) 330, certiorari denied *Gluck v. Kemper*, 284 U. S. 649, 52 S. Ct. 29.

*Sayles v. Steel Co. (banc)*, 128 S. W. (2d) 1040.

*Williams v. The State of North Carolina*, 325 U. S. 226, 65 S. Ct. 1092.

*Yellow Cab Transit Co. v. Overcash* (8th Cir.), 133 Fed. (2d) 228, 232.

## IV.

The rule laid down in *Magnolia Petroleum Co. v. Hunt* did not bar a finding in favor of respondents by the Missouri courts after the Arkansas Workmen's Compensation Commission had denied compensation. Due consideration must be given to the fact that respondents dismissed their claims for compensation made before the Arkansas Workmen's Compensation Commission before submission thereof, and justice demands that the award granted in Missouri be permitted to stand.

*Cromwell v. County of Sac*, 94 U. S. 351, 353, 24 L. Ed. 195.

*Magnolia Petroleum Co. v. Hunt*, 320 U. S. 430, 64 S. Ct. 208.

*Jones v. Securities and Exchange Comm.*, 298 U. S. 1, 18, 56 S. Ct. 654, 80 L. Ed. 1015.

## ARGUMENT.

## I.

Under point I of their argument, petitioners contend that since the Arkansas award was first prosecuted to a conclusion, it was the duty of the Missouri Workmen's Compensation Commission to accept the finding there made, that deceased Loudenslager was an independent contractor as to petitioner Gorum, as finally and conclusively settling the relationship between them, precluding any further investigation of that issue by the Missouri Commission and Courts. They assert that the Missouri Workmen's Compensation Commission as well as the Missouri courts violated Article IV, Section 1 of the Constitution of the United States and the Acts of Congress which implement it, 28 U. S. C. A., Sec. 688, by looking into that issue, and determining it for themselves. They cite a number of cases which announce the basic rule that a final, conclusive judgment of one state, when duly pleaded and proven in a subsequent action, between the same parties on the same cause of action brought in another state, must be given the same force and effect in the second action that it had in the state where rendered, under the principle of *res judicata*.

But was the Missouri award based on the same cause of action of which the Arkansas Commission retained jurisdiction despite the protests of these respondents? Were the same issues involved? We think not.

Claimants originally filed their claim in Arkansas, for benefits created in their favor by the statutes of Arkansas, and based on a contract of employment entered into between the deceased and Mr. Gorum, in Arkansas, about

February 1, 1940. This was the only contract, of employment or otherwise, with which the Arkansas Commission dealt, or on which its award denying compensation was based. The record brings this home. The Arkansas Commission, in its award, stated this conclusion of law: "It is not disputed that the contractual relationship between the deceased, Guy Loudenslager, and Jack Gorum d/b/a the Arkansas Traveler Truck Line was entered into in Bentonville, Benton County, Arkansas, on or about February, 1940" (R. 295).

As we have pointed out in our statement of the case, after hearing on the claim began before the Arkansas Commission, respondents' counsel first became aware of the fact that the arrangement made in Arkansas in February, 1940, between the deceased and Mr. Gorum had terminated in January, 1941 (R. 141), and that deceased was re-employed by Mr. Gorum under a contract of employment made in Carthage, Missouri, in April, 1941 (R. 133). Respondents then dismissed their Arkansas claim before its submission and filed claim with the Missouri Commission. This was for the express purpose of prosecuting another and different cause of action for the death of Mr. Loudenslager, a cause of action created by the statutes of Missouri.

The record shows two separate contracts of employment, made in separate states, at separate times. Moreover, it shows the earlier arrangement, made in Arkansas, had terminated months before deceased was re-employed in Missouri. Therefore, we urge, the cause of action before the Arkansas Commission and on which its award was based was not the same cause of action on which Missouri awarded compensation. The Compensation Act of Arkansas was a part of the contract there made; the Missouri Act in Missouri.

Under such circumstances the applicable rule is not laid down by those cases cited by petitioners under their point I. The applicable rule on this record is found in *Cromwell v. County of Sac*, 94 U. S. 351, 353, 24 L. Ed. 195, where this Court stated the law to be:

“But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action.”

This statement of the law was reaffirmed in the very recent case of *Mercoird Corp. v. Mid-Continent Inv. Co.*, 320 U. S. 661, 64 S. Ct. 268, 274, 88 L. Ed. 376.

Under the authority of these cases we respectfully submit that the point determined by the Arkansas Commission against the protests of these respondents, the relationship of the deceased to Mr. Gorum under a contract of employment made in Arkansas, and terminated, could have no binding or conclusive effect on the determination by the Missouri Workmen's Compensation Commission or the Missouri courts on the relationship of the deceased to Mr. Gorum under a later contract of re-employment made in Missouri. That issue was never before the Arkansas Commission and was not there ruled.

## II.

At page 29 of their brief, under their point I, petitioners suggest that "The recognition of the Arkansas award by the Missouri Workmen's Compensation Commission and the granting it full faith and credit would not violate or conflict with any policy of the State of Missouri."

We cannot agree with this statement, which petitioners do not support with authority.

The public policy of a state is expressed in its statutory enactments. The Workmen's Compensation Code of Missouri is a statutory enactment. By statute, original jurisdiction of all matters embraced therein, is vested in the Missouri Workmen's Compensation Commission, which alone is empowered to find facts. The courts of Missouri hold that the Compensation Code is exclusive and substitutional and cannot be rewritten by the courts. *Kemper v. Gluck*, 327 Mo. 733, 39 S. W. (2d) 330, certiorari denied *Gluck v. Kemper*, 284 U. S. 649, 52 S. Ct. 29; *Sayles v. Steel Co. (banc)*, 128 S. W. (2d) 1040.

The public policy of Missouri then is that its Workmen's Compensation Commission alone shall determine the facts on which any award under its Act is based.

Whether or not there was a second contract of employment, whether or not it was made in Missouri, and whether the parties were employer and employee or independent contractor and contractee, were all matters of fact—facts which only the Missouri Workmen's Compensation Commission was empowered to make for the State of Missouri by the public policy of Missouri. The relationship of deceased to Gorum under the Missouri contract of re-employment was a matter in which the state had an interest and it was free to determine such fact for itself. As the Supreme Court of Missouri said in the case at bar, "It seems clear, under the tests of the

Alaska Packers' case, and the Pacific Employers' case, that Missouri has sufficient interest to justify the enforcement of its own act in this case."

In *Yellow Cab Transit Co. v. Overcash* (8th Cir.), 133 Fed. (2d) 228, 232, the court said:

"The full faith and credit clause of the federal constitution does not require Missouri to give effect to the Kansas compensation statute in preference to its own, when doing so would run counter to the domestic policy of Missouri as evidenced by its compensation statute. *Pacific Employers Ins. Co. v. Industrial Accident Commission*, 306 U. S. 493, 59 S. Ct. 629, 83 L. Ed. 940; *Alaska Packers' Ass'n v. Industrial Accident Commission*, 294 U. S. 532, 55 S. Ct. 518, 79 Law. Ed. 1044; *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145, 52 S. Ct. 571, 76 L. Ed. 1026, 82 A. L. R. 696. 'Nothing in the Constitution ensures unlimited extraterritorial recognition of all statutes or of any statute under all circumstances.' *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U. S. 487, 61 S. Ct. 1020, 1022, 85 L. Ed. 1477."

*Williams v. The State of North Carolina*, 325 U. S. 226, 65 S. Ct. 1092.

Missouri, therefore, was entitled to find the facts for itself and it properly did so.

### III.

Under point II of their argument, petitioners contend that the finding of the Arkansas Commission that deceased was an independent contractor was binding on the Missouri Workmen's Compensation Commission, and this even though the proceeding in Missouri was on a different cause of action than the proceeding in Arkansas.

We believe this contention has been fully answered by us in our points I and II, *supra*.

#### IV.

We urged before the Supreme Court of Missouri that the Arkansas Workmen's Compensation Commission was without jurisdiction to enter any award because respondents had dismissed their claim there made. We showed by the transcript of proceedings before the Missouri Workmen's Compensation Commission that the Chairman of the Arkansas Workmen's Compensation Commission had required a \$1,000 bond of Mrs. Loudenslager to secure costs because she was a non-resident (R. 26); that he later reduced this to \$750; that he was told it was impossible for Mrs. Loudenslager to put up any sort of cash bond and that Mr. Peel then stated that unless the cash bond were posted he would dismiss the claim; that the cash bond had to be up on January 3, 1942 (R. 27). The transcript also shows that on January 3, 1942, Mrs. Loudenslager, for herself and as guardian of her daughter, before submission, mailed an outright dismissal of their Arkansas claim to the Arkansas Commission (R. 301-302); that on January 24, 1942, the Chairman of the Commission treated respondents' outright dismissal as a motion to dismiss and denied the dismissal because the claimant had not tendered the accrued costs and that it was the Commission's duty to ascertain the rights of the parties (R. 302). The transcript also shows that on February 6, 1942, telegrams and letters and formal protests were sent to the Arkansas Commission protesting the exercise of any jurisdiction by that Commission (Exhibit "E," R. 31-32a; Exhibits "F," "G," R. 33-36).

We urged before the Supreme Court of Missouri that there was no provision in the Compensation Code of the



State of Arkansas which prohibited the dismissal of claims or which necessitated or authorized security for costs; that no provision prevented dismissal because any accrued costs had not been paid. We urged that in his original answer (R. 299) and which was on file at the time of the dismissal, petitioner Gorum asserted that he was controverting the claim because Loudenslager was not in the employ of and was not engaged in any business for Gorum at the time of his injury, so that dismissal of the claim left the parties in accord on the proposition that no compensation was due under the Arkansas Act. We urged that with the claim dismissed as it was by the respondents, the Arkansas Commission was divested of all jurisdiction in the matter because there was nothing for it to determine since the procedural machinery of the Arkansas Code can be brought into action only by the filing of a claim, and we urged that corollary to Mrs. Loudenslager's right to file a claim was her right to dismissal before final adjudication. *Jones v. Securities and Ex. Com.*, 298 U. S. 1, 18, 56 S. Ct. 654, 80 Law. Ed. 1015.

The Supreme Court of Missouri ruled that point against us. We believe it erred in so doing, but we do not urge that ground before this Court as grounds for granting the writ, but merely to emphasize how this case differs on the facts from *Magnolia v. Hunt*.

We have consistently maintained that respondents' Missouri claims arose out of a different transaction than that before the Arkansas Commission, the one arising out of a Missouri contract into which the Workmen's Compensation Code of Missouri is written by the laws of that state, the other arising out of a contract made in Arkansas with the compensation laws of Arkansas as a part thereof.

But even if we were wrong in this, we do not believe that respondents were precluded by the Arkansas award from prosecuting their claims in Missouri.

In a preceding section of this brief we have quoted from *Cromwell v. County of Sac*. We again quote from that same case, page 356:

"Various considerations, other than the actual merits, may govern a party in bringing forward grounds of recovery or defense in one action, which may not exist in another action upon a different demand, such as the smallness of the amount or the value of the property in controversy, the difficulty of obtaining the necessary evidence, the expense of the litigation, and his own situation at the time. A party acting upon considerations like these ought not to be precluded from contesting in a subsequent action other demands arising out of the same transaction."

The record shows that a hardship was being worked upon respondents by the Arkansas Commission, that they were ordered to give security for costs when the law of that state did not authorize such order, that they were refused a dismissal of their claims and that they did not desire or intend further to be parties to the Arkansas proceeding. Under these circumstances, does justice require that respondents be precluded from prosecuting their claims in the state where both they and the deceased lived, in the state where he was employed, in the state where a great part of his work was carried on, in the state where the employer was licensed and qualified to transact business? Positive injustice would result if respondents are bound by the Arkansas proceedings from which they sought to withdraw.

Petitioners rely chiefly on *Magnolia Petroleum Co. v. Hunt*. The opinion in that case, as we read it, stresses the fact that the rule there laid down is based on the premise that a prior recovery had been sought, prosecuted and recovered. At page 432 of the opinion the court said, "He

sought and procured in Texas an award of compensation for his injury under its Workmen's Compensation Law, and petitioner's insurer made payments of compensation as required by the statute and the award." At page 437 the court said, "But when the employee who has recovered compensation for his injury in one state seeks a second recovery in another he may be met by the plea that full faith and credit requires that his demand, which has become *res judicata* in one state, must be recognized as such in every other." At page 440, "Each state has awarded to respondent compensation for that injury." At page 444, "Respondent was free to pursue his remedy in either state but, having chosen to seek it in Texas, where the award was *res judicata*, the full faith and credit clause precludes him from again seeking a remedy in Louisiana upon the same grounds." But note that the court added, "The fact that a suitor has been denied a remedy in one state because it does not afford a remedy for the particular wrong alleged, may not bar recovery in another state which does provide a remedy. See *Troxell v. Delaware, L. & W. R. Co.*, 227 U. S. 434; cf. *Ash Sheep Co. v. United States*, 252 U. S. 159, 170."

### Conclusion.

We do not believe that any of the cases cited and relied upon by the petitioners rule the facts presented by this record or hold, on the facts present in this record, that the award of the Arkansas Commission was *res judicata* of respondents' rights under the laws of Missouri. We believe we have given this Court many sound reasons, supported by authority which we deem applicable, for holding, as did the Supreme Court of Missouri, that the Arkansas award was not *res judicata* of respondents' rights under

the laws of Missouri. We sincerely believe and urge that justice directs that petitioners' prayer for a writ of certiorari be denied.

Respectfully submitted,

WALTER A. RAYMOND,  
Dierks Bldg., Kansas City, Mo.,  
*Attorney for Respondents.*

**RE COPY**

Office - Supreme Court, U. S.

**FILED**

**MAY 28 1947**

**CHARLES ELMORE BROPLEY**  
CLERK

**SUPREME COURT OF THE UNITED STATES.**

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**OCTOBER TERM, 1946.**  
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**No. 575.**

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**WILLIAM K. GORUM and NATIONAL MUTUAL CASUALTY**  
**COMPANY,**  
**Petitioners,**

**vs.**

**ROBERT BY O. LOUDENSLAGER and CHARLOTTE**  
**LOUDENSLAGER.**  
\_\_\_\_\_

**PETITION FOR REHEARING.**  
\_\_\_\_\_

**JOSEPH N. HASSETT,**  
**Counsel for Petitioners.**



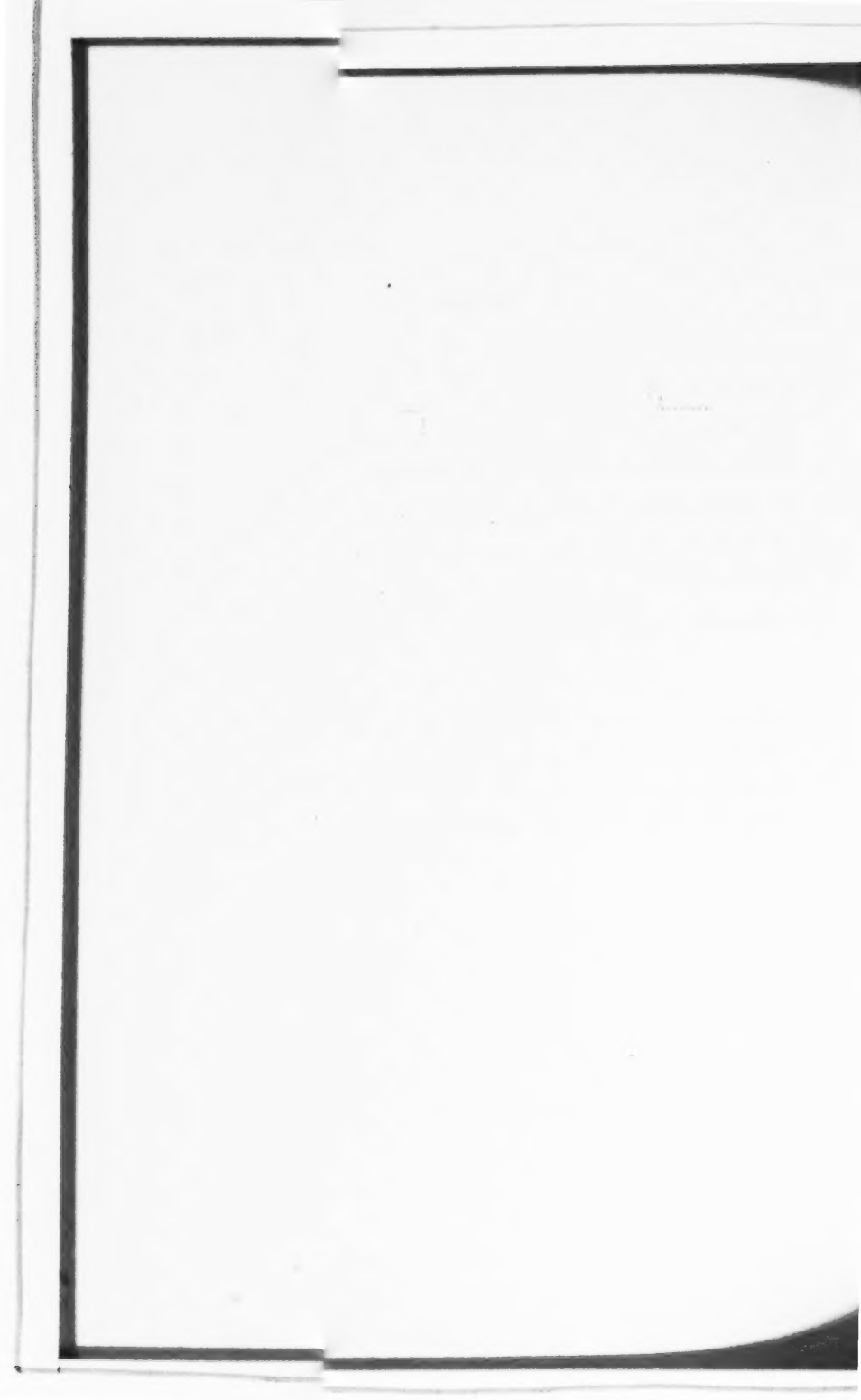
## INDEX.

	Page
Petition for rehearing.....	1-5
I. Jurisdiction .....	1
II. Reasons for petition for rehearing.....	2
III. Controlling question.....	4
IV. Public importance.....	4
V. Prayer .....	4
Certificate of counsel.....	5

### Cases Cited.

Magnolia Petroleum Company v. Hunt, 320 U. S. 430, 64 Sup. Ct. 208, 88 L. Ed. 149.....	2
Troxell v. Delaware L. & W. R. Co., 227 U. S. 434, 33 Sup. Ct. 274, 57 L. Ed. 586.....	2, 3





# **SUPREME COURT OF THE UNITED STATES.**

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**OCTOBER TERM, 1946.**

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**No. 575.**

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**JACK GORUM and NATIONAL MUTUAL CASUALTY  
COMPANY,  
Petitioners,**

**vs.**

**RUBY O. LOUDENSLAGER and CHARLOTTE  
LOUDENSLAGER.**

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## **PETITION FOR REHEARING.**

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Come now the above named petitioners, Jack Gorum and National Mutual Casualty Company, and present this their petition for a rehearing of the petition for writ of certiorari in this case.

**I.**

### **JURISDICTION.**

The petition for certiorari was filed on the 5th day of October, 1946, and denied on the 5th day of May, 1947. This petition is filed within twenty-five days thereafter, under Rule 33 of this Court.

II.

**REASONS FOR PETITION FOR REHEARING.**

On reconsidering the petition for writ of certiorari and supporting brief, petitioners believe that said petition for writ of certiorari and supporting brief do not sufficiently call to this Court's attention the fact that the judgment and opinion of the Supreme Court of Missouri are based upon a misconstruction of the opinions of this Court in the cases of *Magnolia Petroleum Company v. Hunt*, 320 U. S. 430, 64 Sup. Ct. 208, 88 L. Ed. 149; and *Troxell v. Delaware L. & W. R. Co.*, 227 U. S. 434, 33 Sup. Ct. 274, 57 L. Ed. 586.

In its opinion the Supreme Court of Missouri quoted from the language of this Court in the case of *Magnolia Petroleum Company v. Hunt*, 64 Sup. Ct., l. c. 216, as follows:

"The fact that suitor has been denied a remedy by one state because it does not afford a remedy for the particular wrong alleged would not bar a recovery in another state which does provide a remedy."

The Supreme Court of Missouri misconstrued this language to mean that the Missouri Workmen's Compensation Commission was not required to give full faith and credit to the final, conclusive award of the Arkansas Workmen's Compensation Commission, duly pleaded and proven in the Missouri proceeding, because compensation in the Arkansas proceeding was sought under the Arkansas Workmen's Compensation Act, and the compensation sought in the Missouri proceeding was sought under the Missouri Workmen's Compensation Act, even though both Arkansas and Missouri afforded a remedy to the widow of the deceased if he were an employee, and both States denied a remedy to her if he were not an employee, and recovery

under both claims depended upon proof that deceased was an employee, and recovery in the Arkansas proceeding was denied because the evidence failed to prove that deceased was an employee.

The above construction placed on the language of this Court, above quoted, is beyond doubt contrary to the ruling of this Court in the Magnolia Petroleum Company case.

In the Troxell case an action was brought under the Federal Employer's Liability Act to recover on account of the death of an employee growing out of negligence of a fellow servant. A prior judgment was pleaded as *res judicata*. The prior action had been to recover damages on account of the death of the employee under the Pennsylvania law, which did not afford a remedy for such death if it resulted from the negligence of a fellow servant. The Court held that the first judgment was not *res judicata* because the remedy sought in the second action could not be afforded in the first action. This Court observed that the right to recover under the Pennsylvania law was not involved in the second action, and the right to recover on account of the negligence of the fellow servant was not involved in the first action. The Court held that the first judgment was not *res judicata* because the remedy sought in the second action could not be granted plaintiff in the first action. The ruling in the Troxell case does not depend upon the fact that the right to recover asserted in the first action was not passed on in the second action, nor on the fact that the right asserted in the second action was not passed upon in the first action. Yet the Missouri Supreme Court has construed that opinion to mean that if the right to recover under the Missouri Workmen's Compensation Act was not involved in the Arkansas proceeding, and if the right to recover under the Arkansas Workmen's Compensation Act was not involved in the Missouri

proceeding, the Missouri Courts need not give full faith and credit to the final, conclusive award of the Arkansas Workmen's Compensation Commission.

### III.

#### **CONTROLLING QUESTION.**

The controlling question here is whether the Missouri Workmen's Compensation Commission, in a subsequent proceeding, must give full faith and credit under Art. IV, Sec. 1 of the Constitution of the United States to the prior, final, conclusive award of the Arkansas Workmen's Compensation Commission, where both claims for compensation were based upon the same injury and death, and where both States afforded a remedy to the widow of an employee on account of such death, and she prosecuted both claims on the theory that the deceased was an employee.

### IV.

#### **PUBLIC IMPORTANCE.**

The issues involved in this case are of public and general importance. It involves the rights of all employers and employees where the employee resides in one state and is working in another state, and will have an important bearing upon the willingness of employers to hire employees residing in states other than the place of their employment, and involves the right of one state to relitigate a second time issues that have been adjudicated in another state.

### V.

For the foregoing reasons, petitioners, Jack Gorum and National Mutual Casualty Company, respectfully urge

that a rehearing be granted; that, upon further consideration, the order of May 5th, 1947, denying the petition for certiorari, be revoked, and that the writ of certiorari issue.

JOSEPH N. HASSETT,  
Counsel for Petitioners.

I, Joseph N. Hassett, counsel for the above named petitioners, Jack Gorum and National Mutual Casualty Company, do hereby certify that the foregoing petition for rehearing in this cause is presented in good faith and not for delay.

Joseph N. Hassett,  
Counsel for Petitioners.